IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.2547 OF 2005

Kai.Sushilatai Gaikwad Bahuuddeshiya Sanstha. ...Petitioner.
Versus
All India Council for Technical Education & Ors. ...Respondents.

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Mr. S. G. Aney, Senior Advocate with Mr. J. S. Chandanani for the Petitioner.
Ms. Beena Menon for Respondent No.1.
Mr.S. D. Thokade for Respondent No.2.
Mr. R. D. Rane, GP for Respondent No.3 and 4.

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CORAM : A. P. SHAH AND
DR. D.Y. CHANDRACHUD, JJ.

June 27, 2005.

ORAL JUDGMENT: (PER DR. D.Y. CHANDRACHUD, J.):

Rule, by consent returnable forthwith. Counsel appearing on behalf of the Respondents waive service. By consent of Counsel and at their request taken up for hearing.

2. In September 2004, the All India Council for Technical Education invited applications for the establishment of new Technical Institutions for the Academic Year 2005-06 and issued guidelines governing the processing of applications. The Petitioner submitted a proposal on 15th December 2004 for setting up an Engineering College at Kegaon in the District of Solapur. The application was inter alia accompanied by a 'no objection' that was granted by Solapur University to the proposed College. The Petitioner was called upon to remain present before the Hearing Committee of the First Respondent, which furnished to the Petitioner an opportunity of being heard. Initially by an order dated 9th February 2005, the Petitioner was informed that a Letter of Intent could not be issued on the ground that the Petitioner did not have the required funds of Rs.150 lakhs. The Petitioner thereupon submitted a representation on 28th February 2005 stating that the institution commanded a resource base of Rs. 2.20 crores and that the work of construction of the proposed college had been taken up. On 10th March 2005, the First

Respondent issued a Letter of Intent to the Petitioner for the establishment of a Degree College imparting instruction in Engineering and Technology. The Petitioner was called upon to furnish a refundable performance guarantee fee of Rs.35 lakhs, amongst other conditions, and a non-refundable visit fee of Rs.50,000/-. It has been stated that the Petitioner submitted a Demand Draft on 28th March 2005.

3. On 4th April 2005, the First Respondent addressed a letter to the Petitioner recording that subsequent to the grant of the Letter of Intent, it had come to the notice of AICTE that the Petitioner had misrepresented facts at the time of the hearing before the Committee and had fraudulently obtained a Letter of Intent. The communication of the First Respondent relied upon a surprise inspection which was carried out on 22nd March 2005 which revealed the following situation:

> "-i) The total built-up area of the completed building along with the landscaping and boundary wall is 1422.63 sq.m.
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> -ii) A shaded workshop with Laboratory area, which is

nearing completion, is equal to 359.9 sq.m.

-iii) The building, which is under construction (lintel and First floor roof not yet casted), is equal to 1610 sq.m."

The First Respondent recorded that the built up area that was available for the proposed institution was far below the norms laid down and that the photographs which were submitted to the Council were fake. On this ground the Letter of Intent came to be recalled.

4. The petition under Article 226 of the Constitution was instituted in order to challenge the withdrawal of the Letter of Intent by AICTE on 4th April 2005.

5. AICTE has in the exercise of its statutory fucntions laid down norms for the establishment of new Technical Institutions. The guidelines prescribed by AICTE lay down a national calendar or schedule for processing of applications for the year 2005-06. Broadly, two stages are contemplated in the guidelines. The first stage

involves the submission of the application, verification of documents at the Regional Office, the presentation of a project proposal before the Hearing Committee and the issuance of a Letter of Intent. Appeals are provided against an adverse decision. The second stage involves a confirmation of the preparedness of each applicant, a visit of the Expert Committee, the issuance of a letter of approval or as the case may be, of deficiencies and the pursuit of remedial measures by the Institution. The norms governing the establishment of new institutions provide “essential requirements” in respect of land, built up area, instructional area, Computers, Library, faculty and funds. The norms also prescribe “desirable requirements”.

6. In so far as the built up area is concerned, for an institution imparting education in Engineering Technology, the minimum requirement is, a total built up area of 3000 sq.mtrs. comprised of 1745 sq.mtrs of instructional area, 240 sq.mtrs. of administrative area and 1015 sq.mtrs. of circulation and other areas. The norms for the instructional area consist of requirements of Classrooms, Tutorial

Rooms, Drawing Halls, Computer Centres, Library and Laboratories. The norms prescribe that in order to become eligible for obtaining a Letter of Intent, an institution must fulfill a requirement of a built up area of at least 3000 sq.mtrs. for first year classes and must submit proof of the completion of a building structure upto the Lintel level for the required area along with plastering and flooring of the required institutional building on a permanent site in accordance with approved building plans.

7. An affidavit in reply has been filed in these proceedings by the Regional Officer in the Western Region of the First Respondent in which it has been stated that after the Letter of Intent was issued on 10th March 2005, the documents that were submitted by the Petitioner were examined and verified again as a part of a routine exercise which is carried out in all cases to enhance transparency and as a safeguard against misrepresentation and misreporting. At that stage, the First Respondent observed that another building was under construction and the progress of the construction did not demonstrate

the fulfillment of the requirement of a total area of 3000 sq.mtrs. A two member Committee was hence constituted and the Committee was directed to visit the site of the construction and to file its report. The Committee visited the site and submitted its report together with photographs which were taken at the time of visit. According to the First Respondent, the report indicated that the proposal of the Petitioner did not fulfill the requirement of a built up area of 3000 sq.mtrs., consequent upon which, the Letter of Intent was withdrawn.

8. In the Supplementary affidavit filed on behalf of the First Respondent in these proceedings, it has been averred that AICTE Council has set up a national calender that is followed throughout the country. A proper system has, it is stated, been put into place under which certain norms have to be fulfilled at a particular stage by all applicants. AICTE has submitted that at the stage of hearing, the applicants are required to complete construction of an area of 3000 sq.mtrs upto the lintel level and there was clear proof that the Petitioner had not satisfied this condition. AICTE has stated before

the Court in its affidavit that the grant of any relief to the Petitioner at this stage would be detrimental to the development of technical education in the State and would affect the functioning of the First Respondent as a regulatory body. It has been submitted that any relief at this stage would dilute the national processing system and the stringent standards that are insisted upon. It has been stated that applicants who do not originally fulfill the norms of the Council would be encouraged to make up deficiencies in the meanwhile and would attempt to get them regularised through the Court. The effort of the Council to ensure uniform qualitative and quantitative development of technical education throughout the country would, it is urged, be adversely be affected.

9. On behalf of the Petitioner, it has been urged that the institution had fulfilled the requirement of a constructed area of 3000 sq.mtrs. upto the lintel level and that, therefore, there was no justification to recall the Letter of Intent. Having heard Counsel for the Petitioner, Counsel for the AICTE and Counsel for the State, we are

of the view that it would not be appropriate for this Court, having regard to the circumstances of the present case and the scope of the jurisdiction under Article 226 of the Constitution to grant relief of the nature that has been sought in these proceedings. AICTE is an expert regulatory body that has been set up under an Act of Parliament to regulate technical education in the country. The Council has laid down norms for the establishment of new institutions. A national calendar has been stipulated with reference to which all applications across the country are processed. The question as to whether an institution complies with the prescribed norms is a matter which must essentially rest with a considered decision of the regulatory body; a decision which nonetheless must be arrived at objectively with reference to well defined norms. In the absence of malafides or obvious perversity the Court would not be justified in sitting as an appellate forum over the decision of the authority. The Court cannot sit as an academician much less as an architect to review the findings of fact of an expert body. In the present case, AICTE deputed an Expert Committee on 22nd March 2005. We have

perused the report of the Expert Committee. The report clearly supports the finding of AICTE that the Petitioner had not fulfilled the prescribed norm of construction upto the Lintel level of an area of 3000 sq.mtrs, so as to justify the grant of a Letter of Intent. The facts which were verified by the Expert Committee were such as to lead to a legitimate inference that the institute had not at that stage fulfilled the required requirements to support the grant of a Letter of Intent.

10. During the course of these proceedings, Counsel appearing on behalf of the First Respondent has fairly stated before the Court that the withdrawal of the Letter of Intent does not shut the Petitioner out of consideration altogether and that it would be open to the Petitioner when the process of considering applications for the year 2006-07 commences, to demonstrate to the First Respondent that it has all the necessary amenities for a new technical institution. This submission would, in our view, adequately safeguard the position of the Petitioner since it has been urged on behalf of the Petitioner that the institution has incurred a considerable degree of expenditure

towards constructing facilities for the proposed Engineering College. We have declined to accept the prayer of the Petitioner that approval be granted to the Petitioner for the current year itselt. AICTE was in our view, justified in recalling the Letter of Intent, for the reasons already indicated earlier. Moreover, it would manifestly be inappropriate to disturb the National Calendar laid down by AICTE which is in the interests of maintaining uniformity of standards all over the country. The ends of justice would be met if the application which was submitted by the Petitioner is considered again by the First Respondent for the next year viz., 2006-07. The First Respondent shall accordingly consider the proposal submitted by the Petitioner and determine whether the requisite infrastructure is available with reference to the norms which have been prescribed, in accordance with law. AICTE shall do so during the course of consideration of applications for the next year.

11. The petition shall accordingly stand disposed of in these terms. There shall be no order as to costs.

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